# 2011 Public Act 152:
# Publicly Funded Health Insurance Contribution Act
# (MCL 15.561 – 15.569)

***Frequently Asked Questions***

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FAQ Notes:

[1] The term "the Act" is referencing the Publicly Funded Health Insurance Contribution Act, 2011 Public Act 152, (MCL 15.561 – 15.569).

[2] The term "hard cap(s)" is referencing the cost limitations set forth in Section 3 of the Act (MCL 15.563).

Updated: November 4, 2013

# 2011 Public Act 152: FAQs

## 1. General

**Q1-1. Does the Act permit the gross-up of compensation?**

A1-1. The Act does not address compensation. The Act applies to a public employer's costs of medical benefit plans for all public employees and elected public officials.

**Q1-2. What type of recourse do employees have if a public employer is going against (not following) the Act? The case is where retirees are being included in the total costs for the health care and the public employer will not remove them when calculating the Section 3 (MCL 15.563) "hard cap" amounts.**

A1-2. The Act identifies what the State Treasurer or the Department of Education may/shall do if a public employer fails to comply with the Act. Section 9 of the Act (MCL 15.569) directs that the State Treasurer may make reductions in Economic Vitality Incentive Program (EVIP) payments the public employer received. The Department of Education shall assess a penalty on payments under the School Aid Fund during the period the public employer is not in compliance.

The Act does not address any recourse for employees, citizens, or other third parties if a public employer is believed not to be in compliance with the Act.

## 2. Medical Benefit Plan Coverage Year

**Q2-1. When does the benefit plan year begin?**

A2-1. The Publicly Funded Health Insurance Contribution Act provides for certain limitations on the amount that public employers may contribute toward the annual cost of medical benefit plans that cover their employees. The Act applies to "coverage years" beginning on or after January 1, 2012. The Act does not use the term "plan year."

Although "coverage year" is not defined in the Act, Treasury has interpreted this term to mean the one-year period beginning on the date that newly elected or newly renewed coverage begins for a group of persons under a medical benefit plan. Usually, this date is shortly after the annual benefit enrollment period during which employees choose coverage. Therefore, the first "coverage year" under the Act would be the one-year period beginning on the date on or after January 1, 2012 that new medical insurance coverage begins.

**Q2-2. Is "coverage year" the same thing as "plan year"?**

A2-2. The Act does not use the term "plan year." See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year." A medical benefit plan "coverage year" may or may not be the same as the period referred to as a "plan year."

**Q2-3. Is the medical plan year referenced in the Act the plan year, the contract year, or the deductible year?**

A2-3. The Act uses the term "coverage year" rather than "plan year," "contract year," or "deductible year." See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year."

**Q2-4. The benefit year under our medical plan is July 1 – June 30, but deductibles begin accruing on January 1. On what date must we be in compliance with the Act for our medical plan?**

A2-4. The Act does not use the term "benefit year," but instead uses the term "coverage year." The "coverage year" is the period that is applicable for determining compliance with the Act, even if the accrual of deductibles is tied to a different period. See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year."

## 3. Medical Benefit Plan

**Q3-1. Does the Act cover plans for dental and vision insurance?**

A3-1. No. A "medical benefit plan" is defined under the Act as "…a plan … that provides for the payment of medical benefits, including, but not limited to, hospital and physician services, prescription drugs, and related benefits …." Treasury has interpreted this definition to exclude separate plans for dental or vision insurance.

**Q3-2. Is short or long term disability insurance considered a "related benefit" to be included in making the contribution calculations under the Act?**

A3-2. No. A "medical benefit plan" is defined under the Act as "…a plan … that provides for the payment of medical benefits, including, but not limited to, hospital and physician services, prescription drugs, and related benefits …." Treasury has interpreted this definition to exclude plans for short or long term disability insurance.

## 4. Public Employer

**Q4-1. Does a local unit of government housing commission have to comply with the Act?**

A4-1. Yes. A local unit of government housing commission would not be exempt from the Act. The housing commission would fall under the definition of "public employer" in Section 2(f) of the Act (MCL 15.562(f)) that includes any "…local department, agency, or authority, or other local political subdivision..."

**Q4-2. Does the Act apply to a Municipal Owned Electric Utility (i.e. "component unit")? Or would the Municipal Owned Electric Utility benefits be part of the city or other public employer calculations for the Act?**

A4-2. Yes. The Act applies to the electric utility. Section 2(d) of the Act (MCL 15.562(d)) specifically defines "local unit of government" to include "a municipal electric utility system".

**Q4-3. Is a public library required to follow the requirements of the Act?**

A4-3. Yes. The Act applies to all public employers. A public library would fall within the definition of a public employer in Section 2(f) of the Act (MCL 15.562(f)). Subsection 2(f) prescribes in pertinent part that:

> "'Public employer' means…a local unit of government or other political subdivision of this state; any intergovernmental, metropolitan, or local department, agency, or authority, or other local political subdivision;…"

## 5. Covered Employees

**Q5-1. Do district court employees fall under the Act?**

A5-1. Yes. District court employees fall under the Act. District court employees (other than a federal district court) are employed by a county. The Act's definition of "local unit of government" in Section 2(d) (MCL 15.562(d)) includes a county. A local unit of government is identified as a "public employer" in Section 2(f) of the Act (MCL 15.562(f)).

All public employers must comply with the Act.

**Q5-2. Does the Act cover elected public officials beginning January 1 or July 1?**

A5-2. A public employer must be in compliance with the Act with respect to its medical benefit plans for each "coverage year" beginning on or after January 1, 2012. The date that a particular person, such as an elected public official, would become subject to the requirements of the Act would depend upon the date that the official became covered under the public employer's medical benefit plan.

**Q5-3. A public employer has retired employees that subscribe to the public employer health plan. Does the public employer need to consider the annual costs or illustrative rate and any payments paid by the public employer for reimbursement of health care costs paid for the benefit of the retiree when calculating their "hard cap" amounts under the provisions of Section 3 of the Act (MCL 15.563)?**

A5-3. No. The Act directs in Section 2(e) (MCL 15.562(e)) that medical benefit plan means "…[a] medical benefit plan does not include benefits provided to individuals retired from a public employer."

## 6. Does 2011 Public Act 152 or 2011 Public Act 54 Apply?

**Q6-1. A collective bargaining unit has a contract that expired on June 30, 2012. The contract was in existence prior to the passage of 2011 Public Act 152. A new contract was not ratified until July 18, 2012. The new contract has their medical benefit plan coverage year starting on August 1, 2012. Their old medical benefit plan coverage year ended on June 30, 2012. The public employer purchased carryover coverage for the month of July.**

**The union's understanding of 2011 Public Act 54 (MCL 423.215b) requires the employer to maintain the insurance benefit, and requires the employees to pay any increase in premiums. When the union went through the month of July under the 2011 Public Act 54, the employer kept up the reimbursement plan as designed in their previous insurance. Then the bargaining unit employees were notified by the public employer that the expenses that they had incurred during July were in excess of what was allowable monthly by 2011 Public Act 152 and the employees had to pay the money back.**

**A) When does the public employer need to comply with the 2011 Public Act 152 requirements for the successor collective bargaining agreement (CBA)?**

**B) For the month of July, do the 2011 Public Act 152 limits apply to this bargaining unit?**

A6-1. A) We are assuming that the collective bargaining negotiations were for successor contracts to those that were in place prior to September 15, 2011. Pursuant to Section 5 of 2011 Public Act 152 (Act) (MCL 15.565(2)), a collective bargaining agreement (CBA) or other contract that is executed on or after September 15, 2011 shall not include terms that are inconsistent with the "hard cap" limitations in Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirements of Section 4 of the Act (MCL 15.564).

Therefore, in this example, the public employer must comply with the Act for the medical benefit plan coverage year that began on August 1, 2012. This is based upon Section 3 (MCL 15.563) and 4 (MCL 15.564) of the Act directing that the "hard cap" limitations and the 80/20 percentage requirements apply for medical benefit plan coverage years beginning on or after January 1, 2012.

In the facts presented, the CBA expired on June 30, 2012. The new CBA was ratified on July 18, 2012 containing a provision that the medical benefit plan coverage year starts on August 1, 2012.

B) In the facts presented, 2011 Public Act 152 would apply starting August 1, 2012 and would not apply for July. However, 2011 Public Act 54 (MCL 423.215b) would apply for July.

2011 Public Act 54 (MCL 423.215b(1)) directs in relevant part that "…after the expiration date of a collective bargaining agreement [CBA] and until a successor [CBA] is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the [CBA]. The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a [CBA] shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits."

2011 Public Act 54 instructs at MCL 423.215b(4)(b) that "'[i]ncreased cost' in regard to insurance benefits means the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in cost by category of coverage and not on changes in individual employee marital or dependent status."

Pursuant to the above-cited statutory provisions, a public employer will need to comply with 2011 Public Act 54 until the new contract is in place. Once the new contract is negotiated, the contract and health insurance benefits will need to comply with the "hard cap" limitations of Section 3 of 2011 Public Act 152 (MCL 15.563) or the 80/20 percentage requirements of Section 4 of 2011 Public Act 152 (MCL 15.564).

**Q6-2. A group of employees are covered by a collective bargaining agreement (CBA) that expired in 2005, prior to the passage of 2011 Public Act 54 and 2011 Public Act 152. The CBA has not been renegotiated. The expired contract states that the provisions of the expired CBA will be enforce until a new contract is ratified. Does the public employer need to comply with the requirements of 2011 Public Act 54 or 2011 Public Act 152 for this group of employees?**

A6-2. Under the facts presented, the public employer did not have a CBA in effect for this group of employees on September 27, 2011 when 2011 Public Act 152 became effective. The public employer indicated that the CBA expired in 2005. The expired CBA's provision that the terms of the expired CBA will be enforced until a new contract is ratified does not constitute a CBA.

2011 Public Act 152 will apply to this group of employees for a medical benefit plan coverage year beginning on or after January 1, 2012, pursuant to Section 3 of 2011 Public Act 152 (MCL 15.563) and Section 4 of 2011 Public Act 152 (MCL 15.564).

## 7. Compliance with Sections 3 (MCL 15.563) and 4 (MCL 15.564)

**Q7-1. Do public employers need to do a majority vote each year if they are choosing the 80/20 percentage requirement option?**

A7-1. Yes. Section 4(1) of the Act (MCL 15.564(1)) that provides the 80/20 percentage requirement option directs that "[b]y a majority vote of its governing body, a public employer, excluding this state, may elect to comply with this section **for a medical benefit plan coverage year** instead of the requirements in Section 3..." (Emphasis added.)

The emphasized language indicates that the majority vote to select the 80/20 percentage requirement option must be made for each succeeding medical benefit plan coverage year.

**Q7-2. A public employer has not elected to comply with Section 4 of the Act (MCL 15.564) (providing for percentage-based limitations on contributions), and is therefore subject to the requirements of Section 3 of the Act (MCL 15.563) (providing for cap-based limitations on contributions). If the employer's contribution equals (but does not exceed) the full capped amount but the amount that employees pay is less than 20% of the total annual costs of their medical benefit plan, is the employer in compliance with the Act?**

A7-2. Yes. Public employers must comply with Section 3 of the Act (MCL 15.563) (providing for capped contributions to medical benefit plans offered to employees) unless they elect instead to comply with Section 4 of the Act (MCL 15.564) (providing that they may not pay more than 80% of the total annual costs of all medical benefit plans offered to employees). Accordingly, for any coverage year, an employer is subject to either the Section 3 (MCL 15.563) limitations, or the Section 4 (MCL 15.564) limitations. The two separate types of limitations do not apply at the same time.

**Q7-3. Can a public employer use its fiscal year to determine the annual cap calculation under Section 3 (MCL 15.563)?**

A7-3. No. The "hard cap" limitations under Section 3 of the Act (MCL 15.563) apply to each medical benefit plan "coverage year" beginning on or after January 1, 2012, and the "hard cap" limitations are based upon the number of employees with single person, individual and spouse, and family insurance coverage. Therefore, the calculation of the "hard cap" limitations must be tied to the period of insurance coverage. Specifically, the "hard cap" calculation must be made for the same period as the medical benefit plan "coverage year." See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year."

**Q7-4. A.) If an employee opts out of health insurance coverage, can that employee be calculated into the "hard cap" amount, Section 3 of the Act (MCL 15.563)? Or does that employee have to be taken out of calculations for the "hard cap" amount, Section 3 of the Act (MCL 15.563)?**

**B.) If an employee opts out of health insurance coverage, can that employee be calculated into the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564)? Or does that employee have to be taken out of calculations for the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564)?**

A7-4. A.) An employee who has opted out of health insurance coverage cannot be calculated into the "hard cap" amount, Section 3 of the Act (MCL 15.563). The "hard caps" under Section 3 of the Act (MCL 15.563) apply with respect to each medical benefit plan "coverage year" beginning on or after January 1, 2012, and the "hard caps" are based upon the number of employees with varying levels of insurance coverage. An employee who has opted out of health insurance coverage does not have any level of coverage, so cannot be included in the "hard cap" calculation. This is true even if the employer makes a payment to the employee in lieu of the employee's participation in the health insurance program.

This follows the express language of Section 3 of the Act (MCL 15.563), which directs in relevant part that "…a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs…" than:

> "…a total amount equal to $5,500.00 times the number of employees with single person coverage, $11,000.00 times the number of employees with individual and spouse coverage, plus $15,000.00 times the number of employees with family coverage…"

The State Treasurer adjusts the medical benefit plans' cost limitations annually. The rates are available by October 1 for the next calendar year. The rates can be found on the Michigan Department of Treasury's website under Local Government Services.

B.) No. The public employer does not factor the number of employees, whether electing health insurance coverage or opting out of health insurance coverage, when calculating their compliance under the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564).

***Q7-5 Has Been Rescinded and Replaced by Q7-22***

**Q7-5. A.) A public employer pays a monthly stipend to employees that choose to opt out of taking health insurance, does the public employer need to include these dollars when calculating the total "hard cap" amount, Section 3 of the Act (MCL 15.563)?**

**B.) A public employer pays a monthly stipend to employees that choose to opt out of taking health insurance, does the public employer need to include these dollars when calculating the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564)?**

A7-5. A.) Yes. The Act directs in Section 3 (MCL 15.563) that "…a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs or illustrative rate and any payments for reimbursement…used for health care costs…[than the specified caps]…for a medical benefit plan coverage year beginning on or after January 1, 2012..."

A public employer must consider in the total annual medical benefit plan amount the monthly stipend it pays to employees who choose to opt out of taking health insurance. A public employer's payment to an employee in lieu of health care coverage is part of the public employer's overall medical benefit plan costs.

B.) Yes. The Act directs in Section 4 (MCL 15.564) that "…a public employer shall pay not more than 80% of the total annual costs of all the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of…health care [costs] and payments into health savings accounts, flexible spending accounts, or similar accounts used for health care…"

A public employer's payment to an employee in lieu of health care coverage is part of the public employer's overall annual medical benefit plan costs.

**Q7-6. Section 3 of the Act (MCL 15.563) specifies a "hard cap" of $11,000 for individual and spouse coverage and $15,000 for family. Our insurance allows us to insure a single parent plus a child as "individual plus one," but the law specifies individual and spouse. Are we required to use the family coverage figure for calculating the "hard cap" amount for the single parent and child?**

A7-6. The "hard cap" limitations in Section 3 of the Act (MCL 15.563) are based upon the typical levels of coverage offered by most medical benefit plans. If a plan offers "individual plus one" coverage for a single parent plus a child that is comparable to the coverage offered for an "individual and spouse," or if a plan offers "individual plus one" coverage for a single parent plus a child in lieu of "individual and spouse" coverage, employees choosing "individual plus one" coverage to insure a single parent plus a child should be included in the "hard cap" calculation at the same rate specified for employees with "individual and spouse" coverage.

**Q7-7. Under Section 3 of the Act (MCL 15.563), it is my understanding that the "hard cap" amounts are to be adjusted upwards with the health care component of CPI. Where are the revised "hard cap" numbers to be found?**

A7-7. Section 3 of the Act (MCL 15.563) stipulates that the new rates will be available "… By October 1 of each year after 2011, the state treasurer shall adjust the maximum payment permitted…for each coverage category for medical benefit plan coverage years beginning the succeeding calendar year, based on the change in the medical care component of the United States consumer price index [CPI] for the most recent 12-month period…"

The rates can be found on the Michigan Department of Treasury's website under Local Government Services.

**Q7-8. Can local units of government elect to comply with Section 4 of Act (MCL 15.564) (providing for contribution limits based on percentages) or exercise the opt-out provision of Section 8 of the Act (MCL 15.568) at any point during the year? How is the "year" determined for purposes of exercising these options? Must the local unit of government renew its election to opt out at the same time each year and if so, when?**

A7-8. A public employer must be in compliance with the Act for each "coverage year" beginning on or after January 1, 2012. See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year." The first "coverage year" falling under the Act would be the one-year period beginning on the date on or after January 1, 2012 that new medical insurance coverage begins. A local unit of government may elect to comply with Section 4 of Act (MCL 15.564) or exercise the exemption ("opt-out") provision of Section 8 of the Act (MCL 15.568) at any time prior to the beginning of a new "coverage year." The election to "opt out" must be made separately for each new "coverage year."

**Q7-9. A public employer is currently on a partial self-funded plan, and all of the employee groups are under the "hard cap" effective 7/1/2012. In a self-funded plan, if a public employer exits the plan, they pay run-out costs for claims that are incurred but not paid by the end of the plan. There is an accrual on the public employer's books to estimate this run-out cost, so they have recognized this expense on their general ledger, but it has not been paid. If the public employer switches from a self-funded plan to a full premium plan and had to pay the insurance carrier's rates immediately, while still paying the run-out costs of the self-funded plan, would both the premium and the run-out cost payments be used to determine compliance with the requirements of Section 3 of the Act (MCL 15.563) (providing for cap-based limitations on contributions) or Section 4 of the Act (MCL 15.564) (providing for percentage-based limitations on contributions)?**

A7-9. Yes. The Act directs in Section 3 (MCL 15.563) that "…a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs or illustrative rate…[than the specified caps]…for a medical benefit plan coverage year beginning on or after January 1, 2012..."

The Act directs in Section 4(2) (MCL 15.564(2)) that "…a public employer shall pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of…health care [costs]..."

The run-out costs are still payments for a medical benefit plan (albeit now cancelled) for the public employer's employees and if overlap occurred in paying the insurance carrier's rates and the run-out claims that had accrued, both costs must be considered in determining compliance under Section 3 of the Act (MCL 15.563) and Section 4 of the Act (MCL 15.564).

**Q7-10. Do employer contributions to a Retiree Health Savings program (RHS) or Health Care Savings Program (HCSP), both of which are for use upon retirement, need to be included when calculating either the "hard cap" amounts under Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirement under Section 4 the Act (MCL 15.564)?**

A7-10. Yes. The Act directs in Section 3 (MCL 15.563) that "…a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs or illustrative rate…[than the specified caps]…for a medical benefit plan coverage year beginning on or after January 1, 2012...".

The Act directs in Section 4(2) (MCL 15.564(2)) that "…a public employer shall pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of…health care [costs]..."

The definition of "medical benefit plan" in Section 2(e) of the Act (MCL 15.562(e)) is broad and would include a health care savings program used for the purpose of funding current public employees' health care costs in retirement. Subsection 2(e) directs that:

> **"'Medical benefit plan' means a plan established and maintained** by a carrier, a voluntary employees' beneficiary association described in section 501(c)(9) of the internal revenue code of 1986, 26 USC 501, or **by 1 or more public employers, that provides for the payment of medical benefits, including, but not limited to, hospital and physician services, prescription drugs, and related benefits, for public employees or elected public officials.** Medical benefit plan does not include benefits provided to individuals **retired** from a public employer." (Emphasis added.)

Subsection 2(e)'s (MCL 15.562(e)) exclusion from the definition of medical benefit plan is expressly limited to benefits provided to individuals now retired.

The language in the Act limiting a public employer's contributions to the health care costs of its employees places the focus on what is being paid by the public agency now as opposed to when its employees benefit.

Also, the Act's limits on employer contributions are not restricted to just medical benefit plans, health savings accounts, and flexible spending accounts. Both "hard caps", Section 3 of the Act (MCL 15.563), and 80/20 percentage requirements, Section 4 of the Act (MCL 15.564), follow the listing of those three accounts with the phrase "or similar accounts used for health care costs."

Thus, under the Act, as currently written, a public employer's contributions to a health care savings program used for the purpose of funding current public employees' health care costs in retirement must be included in the calculation of the "hard cap" amounts, Section 3 of the Act (MCL 15.563), and the 80/20 percentage requirements, Section 4 of the Act (MCL 15.564).

**Q7-11. A public employer has a policy where newly hired employees are required to pay 20 percent of their health insurance premiums. Since the inception of the policy, one employee has been hired and is paying 20 percent of the premiums. The public employer has a plan to have ALL employees paying 20 percent of their premiums by July 1, 2014. Does the public employer still need to comply with the Act for all employees by either complying with the "hard cap" amounts under Section 3 (MCL 15.563), the 80/20 percentage requirement under Section 4 (MCL 15.564), or by exempting itself ("opting out") under Section 8 (MCL 15.568)?**

A7-11. Yes. The Act applies to all public employees.

However, Section 5(1) of the Act (MCL 15.565(1)) has specific provisions that "If a collective bargaining agreement or other contract that is inconsistent with sections 3 and 4 is in effect for a group of employees of a public employer on the effective date of this act, the requirements of section 3 and 4 do not apply to that group of employees until the contract expires…"

The effective date of 2011 Public Act 152 is September 27, 2011.

**Q7-12. If a public employer is trying to maintain compliance under Section 4 of the Act (MCL 15.564) by allocating an 80/20 cost share ratio, how does the public employer calculate employer/employee costs under a Health Reimbursement Arrangement (HRA) where the actual costs are not known until year end? Does the public employer only calculate based on the base cost of the plan (i.e. an 80/20 split on that) and not worry about the reimbursements?**

A7-12. The public employer risks not being in compliance with the Act, if they pay more than 80% of the total annual costs.

The Act directs in Section 4(2) (MCL 15.564(2)) that "…a public employer shall pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of…health care [costs]..."

**Q7-13. A) If an insurance company charges an annual "claims assessment" (usually 1% of all the claims paid during the previous year) at the end of each year, does the public employer need to include the "claims assessment" cost into the "hard cap" limitation or 80/20 percentage requirement calculation?**

**B) If so, which calculation year would they include the costs, in the year the costs are paid by the public employer or the year the "claims assessment" costs pertain to?**

A7-13. A) The Health Insurance Claims Assessment Act (HICAA) (Michigan Claims Tax) is silent on whether the cost of HICAA should be considered a "cost" of a medical benefit plan for purposes of 2011 Public Act 152. As such, public employers may want to take a conservative approach and assume that the costs of compliance with HICAA are to be included as a cost to be added when figuring compliance with the "hard cap" limitation, Section 3 (MCL 15.563), or 80/20 percentage requirement calculation, Section 4 (MCL 15.564) of 2011 Public Act 152.

B) As HICAA is silent as to whether the assessment should be considered a "cost" of the public employer under 2011 Public Act 152, a public employer, in making its decision, may want to consider the language in Section 3 (MCL 15.563) of 2011 Public Act 152 that limits a public employer to paying "…no more of the annual costs…than a total amount equal to…[the specified caps]…for a medical benefit plan coverage year…"

Likewise, Section 4 (MCL 15.564) of 2011 Public Act 152 directs that for a medical benefit plan coverage year, "a public employer shall pay not more than 80% of the total annual costs…"

**Q7-14. A public employer has a Health Reimbursement Account in which the public employer reimburses employees for a portion of their health care deductibles incurred in the course of the coverage year. Some of the reimbursements will not be made, however, until after the end of the coverage year, as employees may incur their medical expenses shortly before the end of the coverage year, not leaving time for reimbursement before the end of that coverage year.**

**What coverage year should the public employer include the reimbursement cost for calculation of the "hard cap" limitations in Section 3 of the Act (MCL 15.563)?**

A7-14. Section 3 of the Act (MCL 15.563) directs that a public employer that contributes to a medical benefit plan for its employees "…shall pay no more of the annual costs…[including]…payments for reimbursement of…deductibles…than a total amount equal to…[the specified caps]…for a medical benefit coverage year…"

Based upon this statutory directive, the public employer should include the reimbursement cost in the coverage year in which the public employer pays the reimbursement expense, not the coverage year in which the employee incurs the medical expense.

**Q7-15. What are the reporting requirements, if a public employer is out of compliance with the Act (i.e. their annual calculation is above either the Section 3 (MCL 15.563) "hard cap" amounts or the Section 4 (MCL 15.564) 80/20 percentage requirement)?**

A7-15. The Act does not stipulate requirements public employers must follow if they are out of compliance. However, public employers may want to report it in their annual financial reports.

**Q7-16. Does the public employer perform an analysis on the "hard cap" compliance under Section 3 of the Act (MCL 15.563) monthly or one time at the medical benefit plan renewal date?**

A7-16. A public employer can perform the calculation as many times as they would like to ensure compliance with the requirements of Section 3 of the Act (MCL 15.563). However, the final calculation would be computed at the end of the public employer's medical benefit plan year to show that they were in compliance with the Act.

**Q7-17. Can a public employer pro-rate the "hard cap" amount under Section 3 of the Act (MCL 15.563) for an employee who changes their insurance status during the year? Example #1: An employee starts the medical benefit plan coverage year with individual coverage. During the medical benefit plan coverage year, the employee marries and changes insurance coverage to individual and spouse coverage. Example #2: During the medical benefit plan coverage year, an employee leaves employment with the public employer. The employee was not covered by insurance for the entire medical benefit plan coverage year.**

A7-17. Yes. A public employer can pro-rate the "hard cap" limits established by Section 3 of the Act (MCL 15.563), if an employee changes status during the year. The calculation would be pro-rated for the time the employee was at each coverage level and/or the portion of the year they were employed.

**Q7-18. Can a public employer charge the "claims assessment" back to their employees and does the charge then get included in the "hard cap" calculation under Section 3 of 2011 Public Act 152 (MCL 15.563)) or the 80/20 percentage requirements calculation under Section 4 (MCL 15.564)?**

A7-18. Nothing in the Health Insurance Claims Assessment Act (HICAA) addresses the relationship between an employer and its employees. Other laws, such as contract law and labor law, may govern that relationship, but the HICAA itself is silent on this issue. Accordingly, the HICAA neither permits nor prohibits an employer from passing the cost of the HICAA assessment on to its employees.

However, the employer, subject to the HICAA, that chooses to charge the assessment back to its employees still remains the entity ultimately responsible for paying the HICAA assessment.

The HICAA is silent on whether the cost of HICAA should be considered a "cost" of a medical benefit plan for purposes of 2011 Public Act 152. As such, public employers may want to take a conservative approach and assume that the costs of compliance with HICAA are to be included as a cost to be added when figuring compliance with the "hard cap" limitation, Section 3 (MCL 15.563), or 80/20 percentage requirement calculation, Section 4 (MCL 15.564) of 2011 Public Act 152.

**Q7-19. How does a public employer allocate the Health Reimbursement Arrangement (HRA) funding and remain in compliance with the IRS guidelines in regarding to health reimbursement arrangements?**

A7-19. The Michigan Department of Treasury (Treasury) is not in a position to opine as to compliance with IRS guidelines. The IRS or other professional should be consulted in that regard.

Treasury's guidance regarding the Act involves interpreting its statutory provisions. If, through a HRA a public employer reimburses employees for qualified medical expenses, the costs of reimbursement would fall under the "hard cap", Section 3 of the Act (MCL 15.563), or the 80/20 percentage calculation, Section 4 of the Act (MCL 15.564).

Section 3 of the Act (MCL 15.563) directs that the "hard caps" apply to a public employer's payments for "…reimbursement of co-pays, deductibles, or payments into health savings accounts, flexible spending accounts, or similar accounts used for health care costs…"

Section 4 of the Act (MCL 15.564) applies the 80/20 percentage limitation to "…all employer payments for reimbursement of co-pays, deductibles, and payments into health savings accounts, flexible spending accounts, or similar accounts used for health care…"

**Q7-20. A collective bargaining agreement (CBA) with one of a public employer's unions has contained what is termed an "insurance fund balance" or an insurance reserve fund. While referenced within the CBA, this fund is maintained and managed by the public employer, and is not held in escrow or pursuant to the terms of any established trust. The "insurance fund balance" has been utilized to absorb annual premium increases (both for health and other insurance benefits) at the time of plan renewal.**

**The "insurance fund balance" is derived from two primary sources. First, when the public employer and this union negotiated cost savings adjustments for insurance programs in the past, the resulting savings were credited to the "insurance fund balance". Second, the CBA contains a formula which had the annual potential to either add or subtract amounts from the "insurance fund balance". The CBA specifically indicated that employee insurance premium contributions were to be paid from the "insurance fund balance" and, in the event that the fund balance became depleted, any excess premium contributions would be payroll deducted from the wages of the enrolled employees.**

**The public employer entered into a new CBA with this union effective July 1, 2012.**

**A.) May the amounts previously accrued in the "insurance fund balance" now be used by the public employer to offset or defray employee premium contributions where the amounts contributed by the public employer (i.e., by using resources from the "insurance fund balance") would thereby exceed the spending limitations established in Section 3 of the Act (MCL 15.563) and Section 4 of the Act (MCL 15.564)?**

**B.) Could the public employer, consistent with the Act, relinquish control of the currently accumulated "insurance fund balance" to an independent third party entity that would then distribute those funds to the employees in order to defray or offset employee premium contributions for health insurance otherwise required in connection with the implementation of the Act?**

A7-20. A.) The answer is not without subjecting the public employer to the statutory penalties. The public employer's use of the "insurance fund balance" to pay any employee costs under the medical benefit plan must be included in determining if the public employer is in compliance with the "hard cap" limitations in Section 3 (MCL 15.563) or the 80/20 percentage limitations in Section 4 (MCL 15.564) for that medical benefit plan coverage year. The public employer's use of the "insurance fund balance" to offset employee premium contributions under the medical benefit plan would be part of the annual costs that are "capped" or limited to the 80/20 percentages for a medical benefit plan coverage year beginning on or after January 1, 2012.

B.) Any public employer funds (even if administered by an independent third party) would be the public employer's funds for purposes of the Act and would be considered in determining the public employer's compliance with the spending limitations in Section 3 "hard cap" (MCL 15.563), or Section 4 80/20 percentage limitations (MCL 15.564).

**Q7-21. Does the Act allow a public employer to have multiple medical benefit plan years? If so, how would a public employer comply under Section 3 of the Act (MCL 15.563) and Section 4 of the Act (MCL 15.564)?**

A7-21. The Act does not specifically restrict a public employer from having different medical benefit plans for different employee groups; if the public employer has multiple medical benefit plans, it may have multiple medical benefit plan coverage years.

The Act directs in Section 3 (MCL 15.563) that "…a public employer that offers or contributes to a medical benefit plan for its employees or elected public officials shall pay no more of the annual costs or illustrative rate…[than the specified caps]…for a medical benefit plan coverage year beginning on or after January 1, 2012…". According to this Section, the "hard cap" limitation would apply to each separate medical benefit plan coverage year. Therefore if a public employer had multiple medical benefit plan years, there would be multiple calculations of the "hard cap" limitations: a separate "hard cap" limitation would tie to each medical benefit plan.

The Act directs in Section 4(2) (MCL 15.564(2)) that "…a public employer shall pay not more than 80% of the total annual costs of all the medical benefit plans it offers or contributes to for its employees and elected public officials. For purposes of this subsection, total annual costs includes the premium or illustrative rate of the medical benefit plan and all employer payments for reimbursement of…health care [costs]…". According to this Section, if the public employer elected to adopt the 80/20 percentage limitation, the 80/20 percentage limitation would apply to ***all*** the medical benefit plans it offers.

***Q7-22 Replaces Q7-5***

**Q7-22. A public employer pays a monthly stipend to employees that choose to opt out of taking health insurance; does the public employer need to include these dollars when calculating the total "hard cap" amount, Section 3 of the Act (MCL 15.563), or when calculating the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564)?**

A7-22. No. A public employer does not need to include in their total annual medical benefit plan amount any stipend it pays to employees or elected public officials who choose to opt out of taking health insurance. A public employer's payment to an employee or elected public official in lieu of health care coverage is not part of the public employer's overall medical benefit plan costs.

**Q7-23. Should insurance agent commissions be included when calculating the total "hard cap" amount, Section 3 of the Act (MCL 15.563), or when calculating the 80/20 percentage requirement, Section 4 of the Act (MCL 15.564)?**

A7-23. The Act does not expressly address whether agent commissions charged by providers to public employers are to be included in the limitations on the public employer's contributions to the costs of the medical benefit plan, the public employer may want to take a conservative approach and assume that the agent commissions are to be included as a cost to be added when figuring compliance with the "hard cap" limitation in Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirement in Section 4 of the Act (MCL 15.564).

**Q7-24. A self-funded public employer receives one set of illustrative rates from its insurance carrier which is applicable to all of it active employees and its retired employees up to age 65 and their dependents. Is a public employer entitled to rely upon the illustrative rates provided by its insurance carrier in calculating whether it is over or under the "hard caps" in Section 3 of the Act (MCL 15.563) for its active employees, despite the fact that some of the illustrative rate is attributable to the claims experience of retirees and their dependents?**

A7-24. Yes, the public employer can rely on the illustrative rate provided by its insurance carrier. The Act does not address how the illustrative rate is determined. The Act places limits on how much of that illustrative rate a public employer may pay in a medical benefit plan coverage year beginning on or after January 1, 2012, for its employees and elected public officials.

***New***

**Q7-25. Does a public employer need to include the costs (taxes and fees) of the Patient Protection and Affordable Care Act (ACA) when calculating the total "hard cap" amount, Section 3 of Public Act 152 (MCL 15.563), or when calculating the 80/20 percentage requirement, Section 4 of Public Act 152 (MCL 15.564)?**

A7-25. The federal Patient Protection and Affordable Care Act (ACA), Pub. L. 111-148, March 23, 2010, 124 Stat. 119, contains certain charges on health insurers and group health plans to offset the financing of the ACA. An amount that a public employer is required to pay pursuant to the ACA is not considered a part of the total annual costs of all the medical benefit plans the public employer offers or contributes to for its employees and elected public officials per Public Act 152.

Costs imposed on the public employer under the ACA are to offset ACA spending and to cover operational costs of the federal law and are not related to the cost of the public employer of providing benefits covered by the medical benefit plan.

***New***

**Q7-26. A self-funded public employer receives one set of illustrative rates (for single, 2-person, and family coverage) from its insurance carrier which is applicable to all of its active employees and its retired employees up to age 65 and their dependents. The illustrative rates are based upon the claims experience of all active employees and retired employees up to age 65 and their dependents. The claims experience for the previous medical benefit plan coverage year indicates an approximate 45%/55% split between the actual costs of active employees and retirees. The illustrative rate reflects the actual amounts which are paid by the public employer for active employees and their dependents in the plan. The same amounts are also paid for retirees up to age 65 and their dependents, but the amounts paid for retirees and their dependents are not included by the public employer in its "hard cap" amount, Section 3 of the Act (MCL 15.563). Is the public employer entitled to rely upon the illustrative rates provided by its insurance carrier in calculating compliance with the "hard cap" limitation in Section 3 of the Act (MCL 15.563), despite the fact that some of the illustrative rate is attributable to the claims experience of retirees and their dependents?**

A7-26. Yes, the public employer can rely on the illustrative rate provided by its insurance carrier. The Act does not address how the illustrative rate is determined. The Act places limits on how much of that illustrative rate a public employer may pay in a medical benefit plan coverage year beginning on or after January 1, 2012, for its employees and elected public officials.

## 8. Collective Bargaining Units

**Q8-1. A) Can a public employer choose to have one collective bargaining unit fall under Section 3 of the Act (MCL 15.563) and another collective bargaining unit fall under Section 4 of the Act (MCL 15.564)?**

**B) Can subdivisions of collective bargaining units fall under different sections?**

A8-1. A) No. Section 4(2) of the Act (MCL 15.564(2)) provides that when a public employer has elected to have Section 4 of the Act (MCL 15.564) apply (if a local unit of government elects this "opt-out" provision, then it must pass a resolution each year), it shall pay not more than 80% of the total annual costs of "all of the medical benefit plans" it offers or contributes to. The implication of this language is that an election to comply with Section 4 of the Act (MCL 15.564) (rather than Section 3 of the Act (MCL 15.563)) affects all of the public employer's medical benefit plans (if it has more than one). Section 4(2) of the Act (MCL 15.564(2)) also provides that where the public employer elects to comply with Section 4 of the Act (MCL 15.564), any elected public official who participates in "a medical benefit plan" offered by the public employer must pay at least 20% of the total annual plan costs. Again, this language implicates that an election to comply with Section 4 of the Act (MCL 15.564) affects all of the public employer's medical benefit plans.

B) No. Subdivisions of collective bargaining units cannot fall under different sections.

**Q8-2. Section 5(2) of the Act (MCL 15.565(2)) specifies that collective bargaining agreements (CBA) or other contracts executed on or after September 15, 2011 must comply with the requirements of the Act. However, the Act had not been signed into law as of that date. Is that date still effective?**

A8-2. The intent of the Act was to make the requirements of Sections 3 (MCL 15.563) and 4 (MCL 15.564) inapplicable to CBAs currently in effect, but to make those sections fully applicable to new CBAs, as well as to extensions or renewals of agreements currently in effect. Section 5(1) (MCL 15.565(1)) specifically exempts from compliance CBAs that are in effect on the effective date of the Act. Therefore, Section 5(2) (MCL 15.565(2)) should be read to provide that CBAs or other contracts executed on or after September 27, 2011 (the actual effective date of the Act) may not include terms that are inconsistent with the requirements of Sections 3 (MCL 15.563) and 4 (MCL 15.564) of the Act.

**Q8-3. May a public employer impose the "hard cap" requirements of Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirements of Section 4 of the Act (MCL 15.564) with respect to a group of employees who are covered by a collective bargaining agreement (CBA) prior to the expiration date of the agreement that is currently in effect?**

A8-3. No, if the imposition of those requirements would be contrary to the terms of the CBA currently in effect. Section 5(1) of the Act (MCL 15.565(1)) exempts CBAs that are in effect on the effective date of the Act from compliance with the Act's requirements. Therefore, if the imposition of the new requirements under either Section 3 of the Act (MCL 15.563) or Section 4 of the Act (MCL 15.564) would be contrary to the terms of the current agreement, an employer may not impose those requirements with respect to a group of employees who are covered by a CBA until the agreement currently in effect has expired, is renewed, or is extended.

**Q8-4. What happens when a three year contract stipulates the 80/20 percentage requirements of Section 4 of the Act (MCL 15.564), but then in the second year of the contract the public employer changes to the "hard cap" requirements of Section 3 of the Act (MCL 15.563)? Do the employees under the contract have to switch to the "hard cap" requirements of Section 3 of the Act (MCL 15.563) or can they stay with the 80/20 percentage requirements of Section 4 of the Act (MCL 15.564)?**

A8-4. A public employer needs to have a majority vote each year if they are choosing the 80/20 percentage requirements of Section 4 of the Act (MCL 15.564) instead of the "hard cap" requirements of Section 3 of the Act (MCL 15.563). Section 4(1) (MCL 15.564(1)) of the Act, that provides the 80/20 percentage option, directs that "[b]y a majority vote of its governing body, a public employer, excluding this state, may elect to comply with this section **for a medical benefit plan coverage year** instead of the requirements in Section 3…" (MCL 15.563). (Emphasis added.)

The emphasized language indicates that the majority vote to select the 80/20 percentage option under Section 4 of the Act (MCL 15.564) must be made for each succeeding medical benefit plan coverage year. If the public employer does not elect by a majority vote the 80/20 percentage option for each succeeding medical benefit plan coverage year, the public employer must comply with the "hard cap" requirements of Section 3 of the Act (MCL 15.563).

**Q8-5. A public employer issued individual employment contracts to administrators and other employees. The contracts were in effect prior to September 15, 2011. There is no single "group" employment contract covering these non-union employees. Are these individual employment contracts within the scope of the exemption created by Section 5 of the Act (MCL 15.565)?**

A8-5. An individual employment contract in effect at the time the Act became effective would fall under the exemption provided by Section 5 (MCL 15.565), if the arrangement between the public employer and individual is not "At Will" but a contract with a specified end date.

An individual employment contract in effect before September 15, 2011 with a definite expiration date would be exempt from the "hard cap" limitations of Section 3 of the Act (MCL 15.563) and the 80/20 percentages of Section 4 of the Act (MCL 15.564), until the contract expires, is extended, or renewed.

**Q8-6. A collective bargaining agreement (CBA) expired in December 2012. In the CBA, there was a separate moratorium agreement on health care costs and premiums until December 31, 2013. Does the public employer need to comply with the requirements of the Act, as of January 1, 2013, for the group of employees covered by the moratorium under the expired CBA?**

A8-6. Yes. The public employer would need to comply with the Act for a medical benefit plan coverage year beginning after the CBA expired in December 2012.

Section 5 of the Act (MCL 15.565) directs that if a CBA that is inconsistent with the Act is in effect for a group of employees of a public employer on the effective date of the Act, which is September 27, 2011, the requirements of the Act do not apply to that group of employees until the contract expires. Thus, the public employer did not need to comply with the Act until after the CBA expired in December 2012.

The expired CBA's provision that there is a moratorium or postponement of action on health care costs and premiums until December 31, 2013, does not constitute a CBA.

**Q8-7. A public employer and its union employees have a contract that expires on June 30, 2013. The employer's medical benefit plan coverage year begins on August 1st of each year. The employer's non-union employees have been under the Act since August 1, 2012.**

**When is the public employer required to comply with the Act with regard to its union employees in terms of applying the "hard cap" limitation of Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirement of Section 4 of the Act (MCL 15.564)?**

A8-7. We are assuming that the collective bargaining agreement (CBA) that expired on June 30, 2013 was in effect on September 27, 2011 when the Act became effective. Section 5 of the Act (MCL 15.565) directs that if a CBA that is inconsistent with the Act is in effect for a group of employees of a public employer on the effective date of the Act, the requirements of the Act do not apply to that group of employees until the contract expires.

Thus, the public employer would have to be in compliance with the Act regarding the union employees on July 1, 2013. The public employer could implement the "hard cap" limitation of Section 3 of the Act (MCL 15.563) or the 80/20 percentage requirement of Section 4 of the Act (MCL 15.564) for the union employees on a pro-rata basis based upon the portion of the medical benefit plan coverage year the union employees were covered by that medical benefit plan.

## 9. Compliance with Section 8 (MCL 15.568)

**Q9-1. Are all public employers eligible to exempt themselves from the Act?**

A9-1. No. The Act directs in Section 8(1) (MCL 15.568(1)) that "[b]y a 2/3 vote of its governing body each year, a **local unit of government** may exempt itself from the requirements of this act for the next succeeding year." (Emphasis added.)

A local unit of government is defined in Section 2(d) of the Act (MCL 15.562(d)) as "…a city, village, township, or county, a municipal electric utility system as defined in section 4 of the Michigan energy employment act of 1976, 1976 PA 448, MCL 460.804, an authority created under chapter VIA of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.108 to 259.125c, or an authority created under 1939 PA 147, MCL 119.51 to 119.62."

**Q9-2. How long can a local unit of government exempt itself from the requirements of the Act? Is there a maximum number of times?**

A9-2. The Act directs in Section 8(1) (MCL 15.568(1)) that "[b]y a 2/3 vote of its governing body each year, a local unit of government may exempt itself from the requirements of this act for the next succeeding year." An annual 2/3 vote of the governing body is required to extend the exemption. There is no limitation on the number of times a local unit of government can exempt itself from the Act.

**Q9-3. Can local units of government elect to comply with Section 4 of the Act (MCL 15.564) (providing for contribution limits based on percentages) or exercise the opt-out provision of Section 8 of the Act (MCL 15.568) at any point during the year? How is the "year" determined for purposes of exercising these options? Must the local unit of government renew its election to opt out at the same time each year and if so, when?**

A9-3. A public employer must be in compliance with the Act for each "coverage year" beginning on or after January 1, 2012. See FAQ2-1 for an explanation of Treasury's interpretation of the term "coverage year." The first "coverage year" falling under the Act would be the one-year period beginning on the date on or after January 1, 2012 that new medical insurance coverage begins. A local unit of government may elect to comply with Section 4 of the Act (MCL 15.564) or exercise the opt-out provision of Section 8 of the Act (MCL 15.568) at any time prior to the beginning of a new "coverage year." The election to opt out must be made separately for each new "coverage year."

**Q9-4. A local unit of government that created a housing commission has exempted ("opted out") itself from the requirements of the Act. The housing commission would like to follow the lead of the local unit of government and exempt itself from the Act. However, the Act does not include the housing commission as an entity that is eligible to exempt itself from the Act. If the housing commission follows the lead of the local unit of government and exempts itself, even though they are not allowed to by law, is the local unit of government penalized?**

A9-4. It would appear, from the facts presented, that as the local unit of government created the housing commission, the local unit of government's decision to "opt out" of the Act would include the housing commission, whether that entity chose to follow the local unit of government's lead or not.

However, if the housing commission has such autonomy that it falls outside the umbrella of the local unit of government's decision, the housing commission, as a public employer, must comply with the Act's limitations on its contributions to its medical benefit plan for its employees by following the "hard cap" requirements, Section 3 (MCL 15.563) or the 80/20 percentage requirements, Section 4 (MCL 15.564).

Also, if the housing commission is not an "arm of the local unit of government", and thus autonomous, the housing commission does not meet the definition of a "local unit of government" in subsection 2(d) of the Act (MCL 15.562(d)) and would not be eligible to exempt itself or "opt out" of the requirements of the Act.

An autonomous housing commission is not one of the entities that qualify for Economic Vitality Incentive Program (EVIP) payments as it is not an eligible city, village, township, or county. So, the penalty of a reduction in EVIP payments would not apply.

However, if the housing commission, as a public employer, was found not to be in compliance with the Act, the housing commission would face all sanctions generally available to enforce a law.

**Q9-5. There is a public library that is under its own board. The library employees are on the same insurance plan/policy as a local unit of government's employees, however, the library employees are not employees of the local unit of government.**

**A.) If the local unit of government exempts itself from the Act, can the public library also exempt itself even though it is not in the definition of a "local unit of government"? Is the public library also under the local unit of government's exemption since they are on the same policy?**

**B.) If the public library cannot exempt itself under the Act, what is the penalty for noncompliance?**

A9-5. A.) Notwithstanding the public library having its own board and the description of the library employees as not being the local unit of government's employees, from the facts presented it does not appear the public library has the authority to operate autonomously from the local unit of government.

So, if the local unit of government exempts itself from compliance with the Act under Section 8 of the Act (MCL 15.568), the local unit of government's decision would include the public library, whether the public library chose to follow the local unit of government's lead or not.

However, if the public library has such autonomy that it falls outside the local unit of government's decision, the public library could not exempt itself from compliance with the Act. The express language of the Act in Section 8(1) (MCL 15.568(1)) limits the election to be exempt from the Act to a "local unit of government," which does not include a public library. A "local unit of government" is defined in relevant part in the Act as "a city, village, township, or county." See Section 2(d) of the Act (MCL 15.562(d)).

So, if the public library is autonomous and not an "arm of the local unit of government", even though the library employees are on the same insurance plan/policy as the City, their public employer is not eligible to "opt out" of the requirements of the Act.

B.) An autonomous public library is not one of the entities that qualify for Economic Vitality Incentive Program (EVIP) payments as it is not an eligible city, village, township, or county. So, the penalty of a reduction in EVIP payments would not apply.

However, if the public library, as a public employer, was found not to be in compliance with the Act, the public library would face all sanctions generally available to enforce a law.